



Our ref: Cob #2888

Date: 10th March 2017

The Director General
Department of Planning & Environment
GPO BOX 39
SYDNEY NSW 2001

Attention: Natasha Harras – Team Leader, Modification Assessments

Re: Response to the Department of Planning in Respect of Tweed Shire Councils combined comments on the proposed amendments to the modification of the Cobaki Concept Approval (MP06_0316 Mod 5) and the proposed modification of the Project Approval (MP08_0200 Mod 4) with regard to the water supply and waste water treatment. (Letter issued 22 February 2017)

Dear Natasha,

I refer to your email of the 22nd of February, which also contained a copy of Tweed Shire Council's comments in respect of the proposed modification.

We have had opportunity to review the comments of Council and respond accordingly.

On page 1 of Council's correspondence they outline the relevant process by which any works proposed by NWS would be assessed prior to the issue of a licence under the Water Industry Competition Act, 2006. We do not disagree with Council's interpretation as outlined in Points A to C. We do however take issue with Council's predetermined stance in respect of a Pressure Sewer System, in that it appears to have arrived at a conclusion in respect of a pressure sewer system that they have not yet been asked to comment upon or assess. Furthermore, Council's statement (page 2) that Council's standards require that conventional gravity sewer be provided for Urban Subdivisions, appears to be at odds with the text within their Subdivision Manual (DCP section A5) and its Design Specification D12, each of which are attached for review. Neither document is clear in stating that Pressure Sewer systems are not supported, rather, the Design Specification goes so far as stating that Pressure Sewer systems must be design in accord with the provisions of the Water Services Association of Australia's document titled **Sewerage Code of Australia, Sewerage Pumping Station Code of Australia and Pressure Sewerage Code of Australia** (refer page 8). We note that it is this document that the proposed modification to the development Code seeks to reinforce. We would respectfully ask that Council simply assess the merits of any proposal that they may receive under Section 68 of the Local Government Act, rather than dismiss the merits of any such system prior to seeing the detail. Furthermore, our request to modify the code really only seeks to add a Pressure Sewerage System as a viable alternative. It does not seek to pre-empt Council's assessment which will follow in due course.

We also note Councils comment "The Cobaki site is well suited for gravity sewer and any approval from Council under s68 will require such". While it could be argued that certain areas on the site located at high level would be well suited for gravity sewer, our expert advice does not agree that a gravity type sewer is at all suited to the low level areas on the Cobaki site. Further comment on this is provided within the attachments to this document. Furthermore, when considering the merits of a Pressure or Gravity system that is subject to an application for approval under Section 68 of the Local Government Act, Council will at all times need to be cognisant of the provisions of Clause 15(2) of the Local Government (General) Regulations 2005, which require decisions to be

made that are consistent with the protection and promotion of public health, the protection of the environment and the safe guarding of assets when assessing any s68 application.

For ease of reference, the provisions of Clause 15(2) are outlined below:-

15 Matters to be considered when determining applications for water supply, sewerage and stormwater drainage approvals

- (1) This clause applies to the following activities:
- (2)
 - (a) carrying out water supply work,
 - (b) drawing water from the council water supply or a standpipe,
 - (c) installing, altering, disconnecting or removing a water meter connected to a service pipe,
 - (d) carrying out sewerage work,
 - (e) carrying out stormwater drainage work.

(2) In determining an application for the purposes of section 68 of the Act for an approval to do any of the activities to which this clause applies, the council must have regard to the following considerations:

- (a) the protection and promotion of public health,
- (b) the protection of the environment,
- (c) the safety of its employees,
- (d) the safeguarding of its assets,
- (e) any other matter that it considers to be relevant in the circumstances.

For the reasons above, we would ask that the Department give no credence to Council's request, which in essence appears to advocate a pre-emptive conclusion on the merits of a Pressure Sewerage System, which when made in the absence of any actual detail, is difficult to understand. NWS and indeed LEDA are cognisant of the need to gain relevant S.68 approvals and this is reinforced in the wording of the proposed modified Code.

We also note Council's concerns in respect of Council being appointed the Retailer of Last Resort. This comment appears to demonstrate a lack of understanding of the relevant issues, as the in this instance, should NWS fall over, then the nominated retailer of last resort (ror) would be Leda Holdings Pty Ltd, who in the IPART licence process, must provide the Deed of Security and Bank Guarantees to the value and duration to be set by the Minister and provided to the Minister before the license is issued. It is suggested that Council should contact IPART for clarification on this proposed issue.

In respect of Council's comments relating to the modified Development Code, we have provided the following comments.

Section 5.10 (1)

We agree with Council's comment. Any such use of the exemption will be limited to LEDA as the landowner.

Section 5.10 (2)

As stated above, we reject Council's comments in this regard. Their position in respect of a Pressure Sewer System has been arrived at without the benefit of any relevant assessment and indeed is contrary to their own controls which stipulate the relevant considerations as they relate to Pressure Sewerage Systems. Council's biased and presumptuous position must be read in the context of their effective role as a commercial competitor to NWS in respect of the provision of Sewerage Services to the Cobaki development.

Section 5.10 (3)

Having regard to Council's comments in respect of this matter we can confirm that the reference to plumbing and drainage works is directed at the carrying out of civil works associated with the construction of a water, sewerage and or recycled water reticulation network.

To assist we have updated the provisions of the modified development code accordingly.

Section 5.10 (4)

We do not think that this clause is invalid. It is quite a pertinent control in that it attempts to demonstrate to Council and others that there is a suitable requirement upon a proponent who relied on an exemption to undertake the works, to remove such works in the event that a licence is not granted by IPART. Indeed, there is opportunity, should this be a fear of Council's (that unsuitable infrastructure remains within the ground if a licence is not granted), then opportunity exists (via this proposed modification) to require a surety or bond so as to enforce the relevant removal should this case eventuate.

Section 5.10 (5)

NWS do not have any problem with enforcing the requirements of WSA.

We note however, that despite Council's comments, there is no reference in Council's controls to reticulated non potable water not being allowed.

Section 5.10 (6)

It is agreed that the provisions of this clause are only applicable in the event that a licence is granted by IPART.

The submitted development code (as modified) included a section titled **Section 5.9 Location and Easements for Services**. This section was accompanied by some typical diagrams which were aimed at giving context to the text within the Code (as modified) as it relates to the location and provision of services. The inclusion of these diagrams have precipitated more questions than answers and as such we propose to take the comments of Council on board and address such matters at the relevant S.68 application stage. Accordingly we have removed Section 5.9 from the Development Code. The new Code is shown below.

We trust that the above information assists the Department in its assessment and it can now proceed to finalise its assessment.

Should you have any queries in respect of the comments above, please do not hesitate to contact the undersigned at any time

Kind regards

Adam Smith
Director
PLANIT Consulting P/L

Enc.

5.10 Private Services Infrastructure

Objectives

- (1) To facilitate alternate services provision in accord with the Water Industry Competition Act 2006 and to ensure that the approvals process is structured so as to achieve the intent of that legislation.
- (2) to minimise infrastructure works and potential environmental impacts associated with High Water Table, Acid Sulfate Soils and discharges to the natural environment.
- (3) To facilitate alternate means of sewer and water infrastructure provision.

Controls

- (1) In the event that the proponent seeks to pursue Water and or Sewerage connections in accord with the Water Industry Competition Act, 2006, then a licence must be sought and issued by IPART for such works, with the exception of those works that are exempted from approval under the Water Industry Competition Act 2006.
- (2) Both conventional gravity sewerage (connection to Tweed Shire Council) and or an alternate Pressure Sewer System pursued under the Water Industry Competition Act 2006, must be designed in a manner consistent with the provisions of Tweed Shire Council Development Design Specification D12.
- (3) Before undertaking any works requiring approval under Section 68 of the Local Government Act, the proponent must ensure that these works are consistent with the conventional sewerage or pressure sewer system requirements of Control No.2 above.
- (4) Should the proponent seek to carry out works in respect of the exemption listed in 1 above and any subsequent Section 68 approval, then in the event that the proponent does not receive a WICA licence and the infrastructure has been constructed on land to be dedicated to Council in the future, then such infrastructure must be removed entirely from the site before Council will accept dedication of the land. Such removal must be done at the cost of the proponent
- (5) Where a dual reticulation water supply for recycled water is provided throughout the development, this must be designed and constructed generally in accordance with WSA Dual Water Supply Systems and Tweed Shire Council Water Supply Specifications.
- (6) The developer must incorporate on the title for all allotments created, relevant Restrictions as to the User which enforce the need for all dwellings and buildings with plumbing (including commercial buildings and the like) to make provision for recycled water service facilities to the approval of the relevant water and sewerage authority